

NOTICE OF PUBLIC RULES HEARING

DATE: Thursday, April 11, 2019
TIME: 11:00 a.m.
LOCATION: Ohio Department of Health
35 E. Chestnut Street
Columbus, Ohio 43215
ROOM: ODH Basement Training Room A

In accordance with *Chapter 119* of the Revised Code (R.C.), the Director of the Ohio Department of Health announces a Public Hearing at the date and time listed above to hear comments regarding the following action:

Ohio Revised Code (O.A.C.) Chapter 3701-12 – Certificate of Need.

The rules set forth in Chapter 3701-12 of the Ohio Administrative Code (“OAC”) establish the reviewability, application, approval and monitoring requirements for the Certificate of Need (“CON”) program. The CON program ensures the public access to quality long-term care services by requiring review and approval of activities involving the location and utilization of long-term care beds and services. Revisions have been made to the rules to incorporate recent changes to Section 3702.52 of the Ohio Revised Code that were included in House Bill 49 as well as a change to Section 3702.511 from House Bill 470 in March of this year. The new statutory language requires the implementation of an expedited process for reviewability determinations and certificate of need applications. The revisions set forth the requirements for both applicants and the Ohio Department of Health.

The following amendments are being proposed:

3701-12-05 The rule establishes the scope of review for certificate of need projects by detailing what is and what is not a reviewable activity. The rule has been revised to include revisions to section 3702.511 that were included in HB 470 of the 131st General Assembly in March 2017. This revision adds to the list of reviewable activities the failure to conduct a reviewable activity in substantial accordance with the approved application for which a certificate of need was granted, including a change in the site, if the failure occurs from the time the application is approved until five years after implementation of the reviewable activity for which the certificate was granted.

3701-12-08 The rule establishes the CON application and completeness process, public notice, review, decision process, and appeal requirements for all CON applications, except those CON applications filed under ORC section 3702.593. The rule has been revised to incorporate the statutory changes to section 3702.52 of the Revised Code that were included in HB 49. These revisions include requiring an applicant to submit a letter expressly requesting an expedited review in addition to the information already required of paragraph (D). Paragraph (H) has been revised to require applicants who have requested an expedited review to provide a response to a director’s request for additional information within fourteen days from the date of the letter. Revisions also include the incorporation of a fourteen-day timeframe for the director’s determination of completeness for expedited reviews and that the notice of completeness for an expedited review must be granted or denied by the director within thirty days. Finally, paragraph (E) has been revised to include an additional fee of \$1000 for each request for an expedited review.

3701-12-09 The rule establishes the CON application and completeness process, public notice, review, decision process, and appeal requirements for CON applications, filed under ORC section 3702.593. The rule has been revised to include required dates for citations to federal code.

3701-12-18 This rule establishes the validity, follow-up, and withdrawal requirements for CONs. The rule is being revised to incorporate the statutory changes to section 3702.52 of the Revised Code that were included in HB 49 that a reviewable activity shall not be determined to not be in substantial accordance with a certificate of need solely because of a decrease in bed capacity or a change in the owner or operator of the facility unless any of the circumstances specified in (B) of section 3702.59 of the Revised Code apply to the new owner or operator.

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New Rule

3701-12-04 This new rule replaces the existing rule in accordance with Legislative Service Commission rule drafting requirements due to changes to greater than fifty percent of the existing rule. The rule sets forth the requirements pertaining to reviewability determinations. These requirements include, but are not limited to, the director issuing a reviewability determination within specified timeframes and any affected person may appeal a reviewability determination. The rule has been revised to incorporate the statutory changes to section 3702.52 of the Revised Code that were included in HB 49. These revisions include the allowance for an expedited reviewability determination to be issued within thirty days of receipt by the director and that the date the director signs the reviewability ruling shall be the date of issuance.

3701-12-11 This new rule replaces the existing rule in accordance with Legislative Service Commission rule drafting requirements due to changes to greater than fifty percent of the existing rule. The rule establishes the timeframes in which affected persons can file written comments during the course of a CON review. The rule has been revised to require written comments on an application that is under an expedited review, to be submitted within 21 days after the application has been accepted for processing by the director. This revision will allow for the consideration of comments and meet the expedited review timelines set in statute.

Rescinded Rule

3701-12-04 This rule is being rescinded in accordance with Legislative Service Commission rule drafting requirements due to changes to greater than fifty percent of the existing rule.

3701-12-11 This rule is being rescinded in accordance with Legislative Service Commission rule drafting requirements due to changes to greater than fifty percent of the existing rule.

Hearing and Contact Information:

At the hearing, people affected by the proposed action may appear and be heard in person or accompanied by an attorney. They may present their positions, arguments, or contentions orally or in writing; may offer witnesses; and may present evidence showing that the proposed rule, if adopted or effectuated, will be unreasonable or unlawful.

To aid in getting visitors through building security, any persons intending to testify at the hearing or planning to observe are encouraged to pre-register by writing to the Office of the General Counsel, Ohio Department of Health, 246 North High Street, 7th Floor, Columbus, Ohio 43215, or by phone to (614) 466-4882, or send an e-mail to odhrules@odh.ohio.gov.

Copies of the proposed rule will be available on the Register of Ohio website:

<http://www.registerofohio.state.oh.us/jsps/publicdisplayrules/searchRuleNumber.jsp> approximately a half day after the rule is filed, or from the Office of the General Counsel, Ohio Department of Health (<https://www.odh.ohio.gov/rules/drafts/drafts.aspx>).

Please e-mail any written comments to ODHrules@odh.ohio.gov by 5:00 p.m. on April 10, 2019.